

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAMELLA WILLSON and DEPARTMENT OF THE NAVY,
SUPSYSCOM, San Diego, Calif.

*Docket No. 96-1220; Submitted on the Record;
Issued July 13, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective September 16, 1995.

The Board has duly reviewed the case on appeal and finds that the Office met its burden to terminate appellant's compensation benefits.

On March 19, 1981 appellant, then a 35-year-old grocery checker, sustained employment-related lumbosacral strain with radiculitis and a bulging disc at L4-5. She stopped work that day and received appropriate continuation of pay and compensation. She was treated by Dr. Sidney H. Levine, a Board-certified orthopedic surgeon, who continued to advise that she was totally disabled due to the employment injury.

On December 9, 1994 the Office referred appellant to Dr. Benjamin A. Cox, Jr., who practices legal medicine, for second-opinion evaluations regarding her back condition, and to Dr. Charles A. Cole, a Board-certified psychiatrist, for a psychiatric evaluation. In a report dated January 17, 1995, Dr. Cole advised that appellant had no psychiatric disability and in a January 22, 1995 report, Dr. Cox advised that appellant had no residuals from the March 19, 1981 employment injury and could return to work without restrictions.

Finding a conflict in the medical opinion evidence, the Office referred appellant, along with a statement of accepted facts that included a position description, a set of questions and the medical record, to Dr. Ronald D. Levin, a Board-certified orthopedic surgeon, and Dr. Mark C. Levine, a Board-certified neurologist, for impartial medical evaluations regarding appellant's back condition. Based on the reports of Drs. Levin and Levine, by letter dated August 7, 1995, the Office proposed to terminate appellant's compensation benefits. Appellant disagreed with the proposed termination but submitted no additional evidence and by decision dated September 11, 1995, the Office terminated her compensation benefits, effective September 16, 1995. Appellant timely requested reconsideration, and submitted additional reports from Dr. Sidney Levine. By decision dated December 6, 1995, the Office denied appellant's request. The instant appeal follows.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.¹

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.² Here the Office determined that a conflict of medical opinion existed between appellant's physician, Dr. Sidney Levine who advised that appellant continued to be disabled from her 1981 employment injury and that of Dr. Cox, who examined appellant for the Office and advised that she no longer had residuals from the employment injury. The Office then referred appellant, along with the medical record, a statement of accepted facts with job description and a list of questions, to Drs. Levin and Levine to resolve the conflict.

In a May 4, 1995 report, Dr. Mark Levine noted appellant's extensive complaints of pain over her cervical, thoracic and low back and left lower extremity that, he opined, were out of proportion to objective findings, stating:

"Objective findings include a slow antalgic gait and generally antalgic pattern of movement in the medical office, but are absent when she believes she is unobserved³.... I suspect that the manner in which the lumbosacral strain, without objective medical findings, continues to be active is primarily because [appellant's] personality has been influenced by this long disability with secondary gain, to the extent that somatization has occurred and the symptoms have become fixed in [her] mind."

He opined that the L4-5 disc bulge was not clinically significant and concluded:

"Based solely on the work-related medical residuals, as I assess them, I believe that she could perform the duties of her job as outlined in the statement of accepted facts. However, in reality, I believe that [she] is currently probably not capable of performing all of the duties of her previous occupation, because the prolonged period during which she has not worked and the self-imposed physical limitations due to her persistent pain, [have] resulted in reduced muscle tone, probably accentuated by increased obesity. Thus, I believe that she probably could not perform the rapid truncal movements, standing, *et cetera*, expected of

¹ See *Patricia A. Keller*, 45 ECAB 278 (1993).

² See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

³ The doctor noted:

"In contrast to the slow, stiff antalgic gait and movement in the office and examining area, I observed [her] ambulating across the parking lot and into her motor vehicle. She walked comfortably and freely, although at a relatively casual pace, across the parking lot; my view of their vehicle was somewhat obstructed, but it appeared that [appellant] got into the driver's side and again, seemed to be able to bend down and ease herself into the vehicle quite smoothly."

an individual employed as a grocery checker. I do not see any reason why [appellant] could not work a full time sedentary job if she were sufficiently motivated.”

In a May 5, 1995 report and work restriction evaluation, Dr. Ronald Levin advised that appellant’s examination was totally inconsistent and suggested a strong effort on her part to grossly exaggerate her condition. He diagnosed lumbar strain with probable complete or near complete resolution, complicated by magnification of symptomatology with no significant objective findings and no residuals. He advised that the 1981 employment injury should have resolved within three months, stating:

“I believe that it did indeed clear within this time frame, but that she has persisted in maintaining the presence of its symptomatology to the point that her symptomatology has been exaggerated to a ludicrous level.”

He, too, advised that the L4-5 disc bulge was not significant and opined that she was capable of performing her regular job duties if she chose to cease magnifying her symptoms. He found no work restrictions and concluded:

“The prognosis here is not very good because in [appellant’s] own mind she feels she is severely disabled, and the more attention by treatment she gets, the more this substantiates her opinion. I recommend she be encouraged to participate in a light exercise program to tone up, and be encouraged to realized that there is very little wrong with her on a physical basis.”

Dr. Mark Levine provided a June 19, 1995 work restriction evaluation in which he advised that appellant could work eight hours per day and listed restrictions to her physical activity.

Following Office requests for a supplementary report to discuss the differences in his opinion and that of Dr. Ronald Levin, in a July 18, 1995 report, Dr. Mark Levine advised:

“There is very little different in the findings recorded by Dr. Levin and myself... I agreed that there are NO objective neurological residuals of [appellant’s] work injury of March 19, 1981. However, it is very clear from [her] ongoing symptomatology, and the reinforcement of her disability by the reports of her treating physician (Sidney Levine, M.D.), that she has been convinced that there is an objective basis for her symptoms. The inconsistencies in the findings recorded by Dr. Levin and myself clearly document volitional symptom magnification by [appellant]. Nonetheless, if [she] were returned to her prior job as checker, in my opinion, there would be either another similar twisting incident or related work strain which would result in still another work injury, or an exacerbation of the prior injury. Thus, I strongly feel that a PROPHYLACTIC work restriction is justified.”

Appellant submitted form reports from Dr. Sidney Levine dated July 7 and October 6, 1995 in which he reiterated his prior conclusion that appellant was permanently disabled.

Both Drs. Ronald Levin and Mark Levine based their opinions on a complete and accurate history that included a job description and, in well-reasoned and thorough reports, clearly explained why they believed that appellant's employment-related disability had ceased. Both noted that she had no objective findings, concluded that her employment-related lumbosacral strain had resolved without residual, that the L4-5 disc bulge was not clinically significant, and that her condition was complicated by symptom magnification. As these reports are well rationalized and are, therefore, deserving of special weight,⁴ the Board finds appellant had no employment-related disability on or after September 16, 1995, and the Office met its burden of proof to terminate appellant's compensation benefits on that date.⁵

The decisions of the Office of Workers' Compensation Programs dated December 6 and September 11, 1995 are hereby affirmed.

Dated, Washington, D.C.
July 13, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁴ See *Kathryn Haggerty*, *supra* note 2.

⁵ The Board notes that appellant submitted medical evidence to the Board with this appeal. The Board cannot consider this evidence, however, as the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).